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BOOK REVIEWS

A TREATISE ON FEDERAL TAXES, fourth edition, by Henry Campbell Black.
(Kansas City: Vernon Law Book Company, 1919, pp. xxxi, 704.)

The first edition of the author's treatise on Federal taxes was published under the title, "Treatise on the Law of Income Taxation under Federal and State Laws," in 1913. The scope of the work was enlarged in the third edition of 1917 to include all Federal taxes, but the entrance of the United States into the World War, and the consequent changes and additions to the Federal statutes for the purpose of enlarging our revenue, "have made necessary a complete revision and re-writing of the volume." Hence, while the fourth edition conforms in its general construction to those which have preceded it, it contains the numerous and radical changes effected by the Revenue Act of 1918—finally enacted in 1919. It thus includes, in addition to the income tax, a consideration of the estate tax, the war profits and excess profits tax, the capital stock tax on corporations, the excise taxes on various occupations, the taxes on transportation, communication and insurance, the stamp tax, and the excise, commodities and miscellaneous taxes. Those portions of the new law embodying the income tax provisions are given in full in the appendix.

Mr. Black maintains in the present volume that painstaking care in the interpretation of the statutes which is characteristic of his former editions. His aim includes, especially, the practical as well as the technical need. In dealing with questions of constitutionality his conclusions become dogmatic statements only when supported by opinions and decisions of much importance. When backed by sufficient authority, however, his conviction is the surest. For example, in discussing certain constitutional objections which have been raised concerning the administrative provisions of the income tax laws, he states that "it may now be regarded as a settled principle of constitutional law that, although a legislative body cannot delegate its powers to make laws, yet, having enacted statutes, it may invest executive officers or boards or commissions created for the purpose with authority to make rules and regulations for the practical administration of such statutes in matters of detail and to enforce the same, and also to determine the existence of the facts or conditions on which the application of the law depends" (p. 29). There are nineteen cases in the income tax section of the Act in which the Commissioner of Internal Revenue is required to make regulations for dealing with special cases.

But one may question the unqualified assertion that the clause in the present income tax law which explicitly designates for purposes of taxation the salaries of the President and Federal judges, is, as applied to the present officers, "undoubtedly unconstitutional" (p. 19). It may be reasonably argued that the clauses of the Constitution which forbid a reduction of the salaries of the President and Federal judges during their tenure of office are not violated by the imposition of an

income tax providing that it is not discriminatory. Can it be said that their incomes have been reduced in relation to other incomes? Would not the exemption of their salaries in effect amount to an increase in their incomes? But while this reasoning as to the incidence of an income tax has force from an economic standpoint, its practical validity is doubtful when applied to the present situation. The fact is that the overwhelming majority of incomes have arisen along with the enormous recent advance in prices. It is in the case of fixed salaried incomes that there exists a most unconscionable lag which applies with special force to the salaries of the Federal officials under consideration. True enough, the lag in the increase of such salaries occurs irrespective of the imposition of the tax, but the tax serves to accentuate the injustice. To hold that the opposite is true in the case of falling prices is to state a principle which has less application, since there is slight possibility of the occurrence of a general fall in prices which could be fairly contrasted with the phenomenal rise of the past six years. The preponderance of authority appears to be in favor of the author's assertion, but would it not be more accurate to say that "there is good authority for not taxing the compensation of the President and judges of the United States during the terms of office for which they had been chosen when the law was passed?" (R. G. and G. C. Blakey, *AMERICAN ECONOMIC REVIEW*, June, 1919, p. 220).

The most intricate problem raised under the present law is that of the nature of stock dividends. The Act of 1913 was not clear in respect to including stock dividends in taxable income, but they were held to be such by the Treasury Department. The Supreme Court decided that this ruling was erroneous; it construed stock dividends as capital and not income (*Towne v. Eisner*, 245 U. S. 418). In this case, however, the profits represented by the dividend were earned prior to 1913. The present Act specifies that "a dividend paid in stock of the corporation shall be considered income to the amount of the earnings or profits distributed." Its constitutional validity is now being questioned in a case before the Court (*Eisner v. Macomber*). Mr. Black's review of this subject is able and enlightening. He refers to several cases bearing on the problem in which "it is said that the word 'income' is not broad enough to include things not separated in some way from the principal. It is not synonymous with 'increase.' The value of corporate stock may be increased by good management, prospects of business, and the like, but such increase is not income. It may also be increased by the accumulation of a surplus fund. But so long as that surplus is retained by the corporation either as a surplus or as increased stock, it can in no proper sense be called income" (p. 92). The distinction in the present Act, however, between the profits of a corporation when divided in the form of stock and when allowed to remain as accumulated or undivided surplus, the value of the stock being thereby increased, is from an economic standpoint of doubtful validity. The crux of the matter in each case appears to be, according to Professor Seligman, whether there has been separation of the increment from capital. It is only when a realized separation has been

made that there is income. Is not the stock dividend a mere paper separation? "In the cash dividend, as in the other stock, the gain is realized and separated; in the stock dividend, as in the addition to surplus, the gain is unrealized and unseparated. The first is income; the second is capital. A cash dividend is income; a stock dividend is capital." (E. R. A. Seligman, *AMERICAN ECONOMIC REVIEW*, September, 1919, page 536.)

In advance of many necessary court and Treasury rulings, answers to all of the difficult and abstruse questions arising in the Act could not be expected. Where decisions and rulings have been made Mr. Black has been careful to point them out. References are frequently made to the formal rulings of the Treasury Department. For example, in the consideration of excise, commodities and miscellaneous taxes it is stated that under a general ruling of the Department a manufacturer is a "person who prepares an article in final marketable form and sells or markets it. The term, manufacturer, is used in these regulations for convenience to include also producer and exporter" (p. 494). Where rulings have not been given no attempt is made to clarify many statements of uncertain or ambiguous construction in the Act. A lengthy consideration of the administrative problems arising from such ambiguities would require more space than is possible in a single volume; yet a clear statement of such problems would have been serviceable. For example, an administrative feature of the income tax, as applied to corporations, is that requiring consolidated returns by companies which are affiliated. According to the law, two or more corporations are deemed to be affiliated "if one corporation owns directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others." The vagueness of the phrase, "substantially all the stock," will probably require a court decision for settlement.

Some of the deficiencies to which attention has been directed are more or less inevitable in the type of book which Mr. Black has written. As was said at the beginning, painstaking care has been exercised in the preparation of the work. If the treatment of the various titles of the Act is not of uniform excellence, it is because of the large number of problems created where the changes in the statutes have been most radical. The author's main contribution is that of a careful digest. In this purpose he has been highly successful. His treatise is thus most useful as a text, as a reference work for the lawyer and as a source-book for the layman.

TIPTON R. SNAVELY.

HUDDY ON AUTOMOBILES, fifth edition, by Arthur F. Curtis. (Albany: Matthew Bender & Company, 1919, pp. 1196).

This very recent edition of this popular work on the law of automobiles presents the rulings in the several States of the Union, and in England, on almost every conceivable question that can arise in the law relating to the automobile.

As a digest of the various decisions it is complete. With this book